PETITIONER'S SUPPORTING BRIEF

Opinions Below

The memorandum opinion of the Trial Court (U. S. District Court for Northern District of Texas) appears at Page 66 of the Transcript.

The opinion of the United States Circuit Court of Appeals, Fifth Circuit, delivered December 1, 1944, appears at Page 338 of the Transcript, and is reported in — Fed. 2nd., Page —.

Jurisdiction

The statutory provisions which sustain the jurisdiction of this Court are fully set forth in Paragraph II of the Petition for Writ of Certiorari hereto attached. Statement of Reasons Relied on for Allowance of Writ appears in Paragraph IV of said Petition.

Statement of the Case

Paragraph I of the Petition for Writ of Certiorari sets forth the matters, facts and proceedings involved which are material to the questions here presented.

Specification of Errors to Be Urged

The United States Circuit Court of Appeals, Fifth Circuit, erred:

(1) In holding that a justiciable controversy existed between the parties, appropriate for judicial determination under the Declaratory Judgment Act (Sec. 400, Title 28, U. S. Code) (see Appendix "C"), where such controversy resulted from an arbitration award

directed by the National War Labor Board, pursuant to the War Labor Disputes Act (see Appendix "A"), and where no attempt or threat to enforce such award is made except through said National War Labor Board, and where no adverse contention as to its legal effect or force is made prior to the institution of suit.

(2) By holding that the pendency of a labor controversy before the National War Labor Board is not a bar to a suit for Declaratory Judgment in the Courts, and particularly in that such decision is not sound judicial discretion as contemplated by the Declaratory Judgment Act in vesting jurisdiction.

(a) Since the National War Labor Board was established by law to "finally determine labor disputes which *might* interrupt work which contributes to the effective prosecution of the *war*," the Court should have exercised its lawful discretion and dismissed the suit.

(3) By holding that the exhaustion of the administrative remedies granted by the War Labor Disputes Act and Executive Order No. 9017, of January 12, 1942 (see Appendix "B"), to employer and employee is not a prerequisite to the bringing of a Court action by either party for an alleged violation by the other of a labor agreement.

(a) The error is especially apparent in such decision in that the matter was already before the National War Labor Board, which Board reserved the right and gives the right of review of arbitration awards, which right of review was not availed before institution of suit.

(4) By holding that the collective bargaining con-

tract between the parties is in force and effect even after due notice by petitioner of its desire to terminate ("amend") said contract pursuant to its option to terminate.

Summary of Argument

Petitioner contends that respondents suit does not allege or support a finding that a justiciable controversy as contemplated by the Declaratory Judgment Act, exists between the parties; that declaratory relief should be denied where other special or statutory remedies are available, where another remedy will be more appropriate under the circumstances, where such declaratory relief interferes with administrative proceedings, at a point where it could not, under settled principles, have interfered with or stopped them under its power to enjoin, or where the parties have not exhausted their administrative remedy of administrative review; that an arbitration award directed by the National War Labor Board is not subject to judicial review or enforcement; and that a notice by one party to another of its desire to terminate or "amend" a collective bargaining contract pursuant to an option to so terminate, constitutes a termination thereof, and thereby a suit as to rights and obligations thereunder become moot.

ARGUMENT

I.

No Justiciable Controversy

As heretofore pointed out, this labor dispute arose when the parties were required by directive of the National War Labor Board to arbitrate two disputed issues. On October 20, 1943, an award was rendered in favor of petitioner (Pages 30 to 36 Tr.). One week later, October 27, 1943, respondent brought this suit to declare its rights and obligations as to said award and under the collective bargaining contract (Page 114 Tr.). Respondent's complaint (Page 1 Tr.) does not allege, and no evidence shows nor does the findings of fact show (Pages 50 and 66 Tr.), that petitioner threatened or attempted to enforce said award by suit or otherwise, except through such relief as may be available by virtue of the War Labor Disputes Act (Pages 164 and 196 Tr.), nor had they contended that such award was enforceable in law. Hence, there was no real, actual or justiciable controversy concerning said award, because, even if petitioner should have obtained an order of said Board enforcing said award, such order would not be reviewable or enforceable.

The United States Court of Appeals for the District of Columbia in the case of *Employers Group of Motor Freight Carriers et al. vs. National War Labor Board et al.*, 143 Fed. 2nd. 145, certiorari denied 65 S. Ct. 72, stated:

> "It is clear and undisputed that no statute authorizes review of the War Labor Board's or-

> ders. As we point below, the legislative history of the War Labor Disputes Act implies a positive intention that these orders should not be reviewable. Aside from that important and probably conclusive fact, the question is whether general equitable principles authorize review. We think they do not."

Again, even if petitioner should have been successful in obtaining a further order of the National War Labor Board enforcing said award, which was the only action or contention threatened or attempted, such further order would not have created a justiciable controversy. The Court further speaking in the foregoing Motor Freight Carriers case stated:

> "Any action of the Board would be informatory and 'at most, advisory.' Appellants demand that we annul and enjoin the Board's order therefore amounts to a demand that we prevent the Board from giving the President *advice* which appellants contend would be erroneous * * * . The correctness of administrative advice cannot be reviewed by the Courts. They have neither the necessary authority nor the necessary qualifications for such work."

The difference between an abstract question and a "controversy" contemplated by the Declaratory Judgment Act, (see Appendix "C") is necessarily one of degree. *Maryland Casualty Co. vs. Pacific Co.*, 312 U. S. 270, 273. But, "basically," the question in each case is whether the facts alleged, under all the circumstances, show that there is a substantial controversy, between parties having adverse legal interests,

of sufficient immediacy and reality to warrant the issuance of a declaratory judgment. *Helco Products Co. vs. McNutt*, 137 Fed. 2nd. 681. The facts alleged and the evidence in this case do not show such a controversy. In fact no contentions or threats of enforcement are plead or shown, except that petitioner sought an order ("advise") of the National War Labor Board.

In the case of *National War Labor Board, et al. vs. Montgomery Ward & Co., Inc.* decided July 19, 1944, by United States Court of Appeals, District of Columbia, 144 Fed. 2nd 528, certiorari denied November 13, 1944, the Court again stated that the "War Labor Disputes Act does not make the Board's orders enforceable or reviewable."

A declaratory judgment may not be granted merely because the challenged directive order of the National War Labor Board may be invalid. Respondent must further have shown that a "case of actual controversy" exists as a basis for the Court's assumption of jurisdiction over the subject matter of the action. Act of June 14, 1934, 48 Stat. 955; 28 U. S. C. 400 (see Appendix "C"). To present such a "case of actual controversy" action by the defendants must be shown "of a definite and concrete character, constituting an actual or threatened interference with the rights of the persons complaining." *Ashwander vs. T. V. A.*, 297 U. S. 288, 324;*Great Lakes Dredge & Drydock Co. vs. Huffman*, 319 U. S. 293;*Aetna Life Insurance Co. vs. Haworth*, 300 U. S. 227, 240; *Electric Bond and Share Co. vs. S. E. C.*, 303 U. S. 419; *Bradley Lumber Co. vs. N. L. R. B.*, 84 Fed. 2nd. 97 (C.C.A. 5), certiorari de-

nied, 299 U. S. 559; *Helco Products Co., Inc. vs. McNutt*, 137 Fed. 2nd. 681 (App. D. C.); *J. P. Agnew & Co. vs. Hoage*, 99 Fed. 2nd. 349 (App. D. C.); *Smith vs. American Asiatic Underwriters, Inc.*, 127 Fed. 2nd. 754, 756-757, affirmed on rehearing, 134 Fed. 2nd. 233 (C.C.A. 9). Respondent failed to allege or show such action by petitioner.

It is plain that the issuance of the directive order of the National War Labor Board, directing the parties to arbitrate, and that any further order directing compliance therewith did not and would not in any wise affect the legal rights of the respondent, and that its continued effectiveness could not and would not effect such rights. Respondent's allegations of contentions to petitioner cannot give rise to a controversy in the constitutional sense. For, in view of the clear pronouncements by the Courts that War Labor Board directive orders do not affect legal rights and cannot be forced in law, such contentions, if indeed any were made, were but idle opinions. Whatever may have been the contentions of the petitioner could not vary the character of the Board's directive order to arbitrate nor the results thereof. Mere abstract contentions cannot serve to confer jurisdiction on the Courts. The authorities are clear that in such circumstances the Courts are without equity jurisdiction. *Federal Trade Commission vs. Claire Furnace Co.*, 274 U. S. 160; *Yarnell vs. Hillsborough Packing Co.*, 70 Fed. 2nd. 435 (C.C.A. 5); *Janes vs. Lake Wales Citrus Growers Association*, 110 Fed. 2nd. 653 (C.C.A. 5); *City of Osoeola vs. Utilities Holding Corp.*, 55 Fed. 2nd. 155 (C.C.A. 8); *Whitehead vs. Cheves*, 67 Fed. 2nd. 316

(C.C.A. 5), certiorari denied, 290 U. S. 704; *Bookbinders Trade Association vs. Book Manufacturers Institute*, 7 F. Supp. 847 (SDNY).

In the case of *Bookbinders Trade Association, Book Manufacturers Institute*, supra, the Court said:

> "A suit for an injunction will not be entertained where those who are said to threaten injury to the plaintiff admittedly have not the power or ability to carry their threats into effect."

The same jurisdictional principles which guide Courts of Equity are applicable for suits of declaratory relief. *Great Lakes Dredge & Drydock Co. vs. Huffman*, 319 U. S. 293; *Ashwander vs. T. V. A.*, 297 U. S. 288.

Petitioners contend that respondent's suit should have been dismissed because the complaint and the evidence show no actual or justiciable controversy between parties on which the Courts could grant relief.

II.

Declaratory Judgment Should Be Denied Where Same Controversy Is Pending Before the National War Labor Board

On July 3, 1943, the Eighth Regional War Labor Board directed the parties to forthwith proceed with arbitration of the disputed issues as provided for under the terms of the collective bargaining contract (Page 241 of Tr.). The directive order did not dismiss the case before the National War Labor Board and it is assumed that it retained jurisdiction to effectuate its order as Executive Order 9017, issued

January 12, 1942, (see Appendix "B") creating the National War Labor Board, charged, "the Board shall finally determine labor disputes which might interrupt work which contributes to the effective prosecution of the war." In finally determining a labor dispute, we cannot conceive that the Board would direct arbitration and then not retain jurisdiction to finally effectuate its terms and results.

On October 28, 1943, petitioners filed their petition for enforcement of the award (eight days after said award had been made and one day after respondents filed this suit) with the Eighth Regional War Labor Board (Defendant's Exhibit No. 1, Page 164 of Tr.), and on November 12, 1943, filed their petition for a strike vote with the National Labor Relations Board, as an economic means of persuading respondent to comply with said award, pursuant to the War Labor Disputes Act (Defendant's Exhibit No. 4, Page 196 of Tr.). These actions occurred prior to the hearing in the District Court.

The declaratory judgment procedure (Section 400, Title 28, U.S.C.) is an improper remedy under the facts in this case. The primary purpose of that statute is to give relief in situations in which it was not previously available, not to displace existing, *particularly special remedies devised for particular situations. Washington Terminal Co. vs. Boswell*, 124 Fed. 2nd. 235, certiorari denied 62 S. Ct. 916.

The National War Labor Board and its Regional Boards were empowered with full and exclusive authority to adjudicate, settle, and finally determine any

and all labor disputes affecting the national war effort by Executive Order No. 9017 of January 12, 1942 (see Appendix "B") and the War Labor Disputes Act (see Appendix "A"). Thereby an *existing special remedy has been devised for a particular situation*, to wit, to adjudicate, settle, and finally determine any and all labor disputes. The entire complaint in this case involved a labor dispute between the parties.

The Declaratory Judgment Act should not be used as an instrument of procedural fencing, either to secure delay or to choose a Court or other forum. *Aetna Casualty vs. Quarles*, 92 F. 2nd. 321. In this case, the National War Labor Board had acquired jurisdiction, directed arbitration, and was in the process of making a final adjudication and determination of the labor dispute. The Court, by making a decision, permitted respondent to choose the forum of the Court rather than the forum of the Board, thereby removing jurisdiction from the Board. The nature of the relief contemplated by the Declaratory Judgment Act requires that when the Court takes jurisdiction, it should do so to the exclusion of other tribunals. *Standard Accident Insurance Co. vs. Grimmett*, 32 F. Supp. 81.

A declaratory judgment should be denied where another tribunal has jurisdiction in the issues, where proceedings involving identical issues are pending in another tribunal, where special statutory remedy has been provided, or where another remedy will be more effective or appropriate under the circumstances. *Aetna Casualty Co. vs. Quarles*, 92 F. 2nd. 321; *Maryland Casualty Co. vs. Boyle Construction Co.*, 123 Fed.

2nd. 558; and *Western Electric Co. vs. Hammond*, 135 F. 2nd. 283.

The most effective and appropriate remedy in this case would have been to have permitted the Board to retain jurisdiction to review the award which it had directed. We cannot assume that the Board would have arrived at any different conclusions from that of the Court in reviewing the merits of the arbitration award. As stated by the Public Panel Member of the Board (Page 227 to 229 of Tr.), which report was adopted by the Board as its order (Pages 240 and 241 of Tr.), "if such an occasion arose and a Board of Arbitrators patently disregarded the plain provisions of the contract, entertained jurisdiction over the objection of the Company, and disposed of the case contrary to the provisions of the contract, then surely the aggrieved party could resort to this Board and probably to the Courts for relief."

The National War Labor Board, by its statement of "policy concerning review of arbitration awards," Paragraphs III and IV (Page 255 of Tr.) reserves the right of review and will undertake to declare and enforce the rights and obligations of the parties when such disputes come properly before the Board regardless of the fact that there may be available other procedures for enforcement.

District Courts cannot declare rights in any case where the declaration under all the circumstances is not necessary or proper at the time. *Angell vs. Schram*, 109 F. 2nd. 380; and *Duart Manufacturing Co. vs. Philad Co.*, 31 F. Supp. 548. Since the Board retained

the right of review and is authorized by law to direct both parties to abide by its final decisions, and affords the right of review of arbitration awards, in the interest of expediting the war effort, it would have been better and appropriate for the Court to have left that specialized, administrative tribunal with the right of review.

Executive Order 9017 (7 Fed. Register, 237, Appendix "B") was issued on January 12, 1944. It established the tripartite National War Labor Board for the peaceful adjustment of labor disputes, in accordance with the no strike-no lockout agreement reached among the representatives of labor and industry who had met at the conference called by the President on December 17, 1941, to assure that the effective prosecution of the war, in which the nation had just engaged, would not be hampered by labor disturbances. The Executive Order authorized the Board, after it had assumed jurisdiction, through certification from the Secretary of Labor or on its own motion, of "labor disputes which interrupt work which contributes to the effective prosecution of the war" to "finally determine the dispute"; and for that purpose the Board might "use mediation, voluntary arbitration, or arbitration under the rules established by the Board."

It appears that the Court should have withheld jurisdiction in this case until such time as the matter had been finally determined by the National War Labor Board. Effective administration of the vital war time program to avoid and adjust labor disputes depends upon a vigorous public opinion antipathetic to labor

disturbances in war industries, and upon the patriotic cooperation of management and labor in complying with War Labor Board orders. The challenge to the War Labor Disputes Program which the declaration in this case creates is a serious injury to the public interest. "Where large public interests are concerned and the issuance of an injunction may seriously embarrass the accomplishment of important governmental ends, a Court of Equity acts with caution and only on clear showing that its intervention is necessary in order to prevent an irreparable injury." *Hurley vs. Kincaid*, 285 U. S. 95, 104. The considerations animating the Courts in refusing injunctive relief to private persons where such relief would encourage the disregard of the established governmental procedures for the effective prosecution of the war are well expressed in *Kittrell vs. Hatter*, 243 A.L.A. 472, 10 S. O. 2nd. 827, 832:

> "This Court here now finds and declares as a matter of current history within the knowledge of all men that the urgent necessity to produce all the sinews of war, a mechanized global war, has necessitated War Production areas, disrupting the normal law of supply and demand—that speed in the production of the sinews of war is of the essence of the war effort and that the interposition of restraining orders or injunctions issued by State and inferior Federal Courts will hinder and handicap the war effort, the paramount necessity of the hour. These public interests should not be subordinated to the personal rights of any individual."

The Supreme Court of the United States found it necessary recently to reiterate this long-established rule in its opinion in *Jankus vs. United States*, 321 U. S. 414, 440-441:

> "Where an injunction is asked which will adversely affect a public interest for whose impairment, even temporarily, an injunction bond cannot compensate, the Court may, in the public interest, withhold relief until a final determination of the rights of the parties, though the postponement may be burdensome to the plaintiff * * * . This but another application of the principle, declared in Virginian Railway Co. vs. System Federation, 300 U. S. 515, 552, that 'Courts of Equity may, and frequently do, go much further both to give and withhold relief in furtherance of the public interest than they are accustomed to go when only private interests are involved.' "

This suit should have been dismissed because the labor dispute was pending before the National War Labor Board.

III.

Exhaustion of Administrative Remedies Before Declaratory Relief Is Granted

After the arbitration award was made, pursuant to the directive order of the National War Labor Board, respondents did not seek review thereof by said Board, and did not ask review thereof in response to petitioners' petition for enforcement of said award filed with the Eighth Regional War Labor Board on October 28, 1943, (Defendant's Exhibit No. 1, Page 164 of

Tr.), but filed this suit one week after the rendition of said award.

As has been heretofore stated, the National War Labor Board, by its statement of "policy concerning review of arbitration awards" Paragraphs III and IV (Page 255 of Tr.) reserves the right of review and will undertake to declare and enforce the rights and obligations of the parties when such disputes come properly before the Board, regardless of the fact that there may be available other procedures for enforcement.

The Court, speaking in the matter of *Utah Fuel Co. vs. Bituminous Coal Commission*, 101 Fed. 2nd. 426, certiorari denied 59 S. Ct. 253, stated:

> "The new power given to the Federal Courts to render a declaratory judgment does not authorize a Court of Equity by declaration to stop or interfere with administrative proceedings, at a point where it could not, under settled principles, have interfered with or stopped them under its power to enjoin."

Although the National War Labor Board was not made a party to these proceedings, by indirection, the declaration did interfere with and stop the administrative proceedings, even before a review of the award had been made. The nature of the relief contemplated by the Declaratory Judgment Act requires that when the Court takes jurisdiction it should do so to the exclusion of other tribunals. *Standard Accident Insurance Co. vs. Grimmett*, 32 F. Supp. 81. Hence, the Court, by making a declaration in this case, took juris-

diction of the dispute to the exclusion of the Board before said Board could make a final determination as to whether or not it would direct compliance with the arbitration award which it had originally directed.

The respondent should have been required to have exhausted the administrative remedy (War Labor Board review) before seeking relief through the Courts, especially since the administrative board directed the arbitration and retained jurisdiction. If parties to a labor dispte in time of war are permitted to come into Court under the declaratory statute prior to exhausting their administrative remedies, it may conceivably be that the Courts will be substituted for the functions of the administrative tribunal and thereby hamper the war effort.

It is difficult to imagine that the already-crowded Courts could undertake to review, hear and finally determine all issues that might arise in labor disputes, particularly before the parties completed use of the administrative procedure provided for such purposes. With the statutory restrictions upon the Federal Courts to restrain labor organizations in their economic right to strike, certainly the Courts are not the appropriate tribunal to effectuate the purposes of the War Labor Disputes Act.

In this immediate dispute, the War Labor Board could have, prior to the declaration, directed both the petitioner and the respondent to continue to work and to produce pending final settlement of the dispute and could have applied sanctions upon either party that might not abide by its decisions. The Courts

are not charged with such functions and are not experts in the field of labor relations.

Respondent's complaint should have been dismissed or withheld until such time as the administrative remedies had been exhausted.

IV.

Termination of Collective Bargaining Contract

The collective bargaining contract between the respondent and the petitioner (Page 114 of Tr.) was dated August 27, 1942, and became effective September 1, 1942, and, among other things, provided:

> "It shall remain in effect from year to year thereafter until terminated by written notice given by either party to the other at least thirty (30) days prior to the termination of any such period."

On July 30, 1943, more than 30 days prior to the first annual expiration date, the petitioner wrote the respondent (see Pages 127 to 128 of Tr.) of its desire to "negotiate amendments" to the agreement.

In reply to the above letter, the respondent wrote the petitioner asking whether such letter "is intended to serve as notice of termination of the contract between the Union and the Company" (see Page 128 of Tr.).

On August 20, 1943, petitioner advised respondent as follows (see Page 129 of Tr.):

> "Relative to your inquiry, if my letter of July 30, 1943, was intended to serve as a notice of

termination of the contract between the Union and the Company, as set out in Section I, Article 1, of the agreement, I wish to say that we did not intend to cancel the entire agreement, but do wish to make certain amendments to the contract for the purpose of clarification. I have not read the amendments that the employees have prepared, therefore, I am not in a position to state these amendments.

"If you do not desire to go into negotiations to make such amendments without terminating the present agreement, we shall then naturally ask to terminate the present agreement and proceed to negotiate another one."

It is a well-founded principle of law that a contract must be mutually agreed upon. A party to a contract in exercising his option to cancel, cannot cancel a part of the agreement without cancelling the entire agreement, except by mutual consent. In this instance, the parties did not so mutually agree, hence, the entire agreement must fall.

All notice given by the petitioner to the respondent indicates that petitioner was not pleased with all of the provisions of the agreement and that, upon the annual expiration date, they desired a different contract. Although some of the provisions were satisfactory, the petitioner indicated that some were not satisfactory. The notice having been timely given, the parties were in a position by operation of law of contracting de novo.

We do not find any Court decisions which touch upon this aspect of collective bargaining contracts.

Considering this situation in the light of customary labor relations, the petitioner must have meant that it was willing to incorporate certain provisions of the expired agreement into a new agreement, but that the full expired agreement was not satisfactory for the purpose of renewing their contractual relationship. If amendments are added, certainly the parties are in a new contractual relationship. To do this, the parties must negotiate and agree upon such changes. The petitioner gave specific notice of its desire to "negotiate amendments." It is customary in negotiating new collective bargaining agreements for such subsequent negotiations to be confined to subjects of which the parties are not in full accord. It would be needless to re-negotiate provisions of expired agreements which are mutually agreeable to all parties.

There can be no doubt but that the petitioner intended by its written notice to terminate the agreement, and in order to maintain a contractual relationship and continued production, advised the respondent that it desired to negotiate a new agreement which would be partially the same as the terminated contract, as well as carrying additional or revised provisions. It is customery in labor relations for the parties to agree to continue a terminated contract from day to day until such time as a new contract has been re-negotiated which, naturally, would include many of the provisions of the terminated agreement.

Collective bargaining contracts are not strictly constued but are liberally construed in order to effectuate industrial peace and the purposes of collective bargaining.

Since we have no Court precedents directly touching on this question, we wish to cite the following official administrative decisions by Governmental agencies charged with the duty of maintaining industrial peace in the field of labor relations. "In any case such interpretations are entitled to great weight." *United States vs. American Trucking Associations* (S. Ct.), 310 U. S. 534.

In the matter of *Great Bear Logging Company and Lumber and Saw Mill Workers Union*, 59 NLRB No. 141, Labor Relations Reporter No. 15, Page 439, the National Labor Relations Board held:

> "The Board has held that a request for modifications much less in scope than those asked for in the instant case was substantial enough to serve notice of contract termination rather than merely a notice of a desire for modfiication. In any event, a request for modifications substantial enough to require extended negotiations between the parties, as was here required, shows an election to terminate."

In re *American Woolen Co. & United Textile Workers of America*, 57 NLRB No. 107, Labor Relations Reporter No. 14, Page 737, the same Board ruled that a letter from a contracting union proposing changes in contract and submitted to employer prior to automatic renewal date of contract is viewed as a notice of termination of existing contract and request for the execution of a new one, despite contention of union that the proposed changes were merely demands for modifications of an existing contract and that no notice of termination was given.

In addition to the above cited cases, there are several hundreds of other similar cases reported by the National Labor Relations Board. This administrative policy is so well-founded that it has become customary for contracting unions to write letters to the contracting employer seeking to "modify" or "amend" existing agreements upon their annual expiration date, rather than to use the actual word "terminate."

The National Labor Relations Act (49 Stat. 449), Sec. 8 (5) requires an employer to bargain collectively with the representatives of his employees. "The Act imposes upon the employer the further obligation to meet with his employees' representatives respecting proposed changes of an existing contract," said the United States Supreme Court in *N.L.R.B. vs. Sands Mfg. Co.*, 306 U. S. 332. In view of this decision holding that the duty to bargain collectively is continuous, it becomes immaterial whether petitioner gave notice to respondent that it desired to negotiate an *entirely* new agreement upon the renewal date of the contract, or that it desired to negotiate amendments to the agreement. In either case, respondent was obligated to bargain, and if amendments were agreed upon, a new contract would become effective, even though it incorporated some or all of the provisions of the former contract. The petitioner would be under a like obligation to bargain concerning elimination of provisions in the former agreement which were unsatisfactory to respondent.

It is against the public policy to require the continuation of a collective bargaining contract beyond its annual renewal date after the employees' representatives

have given timely notice to the effect that the agreement is not satisfactory. To require a strict choice of words, such as "terminate," would do a grave injustice to the employees, who, for economic reasons must necessarily work another year under such agreement. Such strict construction could easily discourage the employees, impair production and create industrial strife, the very same conditions which the legal obligations of collective bargaining intended to correct.

There is a broad difference between a collective bargaining contract, wherein the parties are required to bargain, and a contract respecting sales, services, etc., wherein there is no legal obligation to bargain at all.

This question becomes extremely important because of the rulings of the National Labor Relations Board, an expert tribunal established to effectuate collective bargaining, in that such rulings conflict with the decision of the Circuit Court of Appeals in this case. A clear decision is needed in order that labor relations may be carried on without industrial strife and conflict.

In view of the termination of the collective bargaining contract between the parties, a declaration as to respondent's rights and obligations pursuant thereto becomes moot and respondent's complaint should have been dismissed.

Conclusion

In view of the conflicts of decisions relating to the foregoing questions, the importance to the Nation of maintaining orderly labor relations in time of war and industrial peace, and that the public interest will be promoted by prompt settlement in this Court of the questions involved, it is respectfully prayed that the petition for writ of certiorari be granted and that the declaratory judgment be set aside and held for naught.

Respectfully submitted,

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